IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 842 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
THAKOR ANDAJI SUJAJI & 3 - Opponent(s)

==========

Appearance :
MR IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 18/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order of acquittal dated 22-4-2003 rendered by the Additional Sessions Judge, Fast Track Court No. 3, Mehsana in Sessions Case No. 231 of 2001 acquitting the respondents accused for the offences punishable u/ss 302, 201 and 34 of the I.P. Code.

2. In brief, the prosecution case was that deceased Pratapji Mangaji Thakor and the respondents – accused were residents of Kahipur village and deceased Pratapji was doing agricultural labour work. On 9-9-2000 at about 8-00 p.m. deceased Pratapji started to go to Ambaji on foot with the accused but did not return home. On 13-9-2000 one Maheshkumar Laxmandas Prajapati of Sabalpur village gave 'Vardhi' on telephone to P.S.I. at Vadnagar Police Station at 12-45 hours that his field is in between two gochars on the 'kachha' road going from Sabalpur to Mirzapur (Bamanva) and dead body of a male was lying near the field and it was noticed by his brother Dipakbhai who had gone to the field. On the basis of this information, Vadnagar

Police Station recorded the information as Accidental Death No.10 of 2000 u/s 174 of the Code of Criminal Procedure, 1973. The dead body was identified by the brother of the deceased and panchanama of dead body was drawn. As the dead body was heavily decomposed the doctors were called at the place of the incident and postmortem was performed. The articles like bushirt lying near the dead body, cash and bidies found in pocket of the bushirt and the trouser found on the body were recovered.

3. On the basis of the complaint given by P.S.I. Shri Bharwad of Vadnagar Police Station offence was registered as I – CR No. 117 of 2000 for the offence punishable u/ss 302, 201 and 34 of the I.P. Code and investigation was started. During the course of investigation statement of the witnesses were recorded and the accused were arrested and panchanama of discovery of weapons as well as the panchanama of clothes of the accused were drawn.

4. On completion of the investigation, charge sheet was laid before the learned

J.M.F.C., Vadnagar, Dist. Mehsana for the offence punishable u/ss 302, 201 and 114 of the I.P. Code. As the offence was exclusively triable by the Sessions Court, it was committed to the Sessions Court, Mehsana and it was registered as Sessions Case No. 231 of 2001. The learned Addl. Sessions Judge, Mehsana framed charge Exh. 12 against the accused for the offences punishable u/ss 302, 201 and 34 of the I.P. Code. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution led evidence to prove the charge. On completion of recording of the evidence, the leaned trial Judge explained the incriminating circumstances appearing in the evidence against the accused who explained the incriminating circumstances in their further statement recorded u/s 313 of the Code of Criminal Procedure. The accused in their further statements stated that false case is filed against them. Accused No. 1 – Thakor Anadaji Sujaji in his further statement stated that there were disputes between him and the complainant in respect of property since long, that deceased Pratapji was

involved in many cases of theft and had criminal antecedent , therefore, someone must have committed his murder keeping grudge; and that he does not know anything about the incident.

5. After hearing the learned A.P.P. for the State and learned advocate for the accused, the trial Court found that the prosecution failed to prove the charge levelled against the accused. Therefore,the trial Court acquitted the accused for the offences charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal with a prayer to grant leave to appeal.

6. We have heard the learned A.P.P. for the State at length and in great detail. We have also perused the impugned judgment and record and proceedings of the case.

7. In order to prove that death of deceased was homicidal in nature, the prosecution examined P.W. 8 Dr. Abdulkarim Fakirmahmad Meman at Exh. 67. The witness performed postmortem of dead body of deceased Pratapji.

According to the witness, external and internal injuries found on the dead body were recorded in the postmortem report Exh. 29 and cause of death was due to multiple injuries on the dead body and excessive bleeding.

8. The prosecution produced postmortem report at Exh. 29. It indicates the external and internal injuries found on the dead body and the cause of death. The prosecution also produced inquest panchanama at Exh.25. It indicates that there were multiple injuries on the dead body. In view of this evidence, it becomes clear that Pratapji died on account of the injuries sustained by him and the death was homicidal in nature.

9. In order to connect the respondents – accused with the offence, the prosecution mainly relied upon the evidence of P.W. 1 Bhalaji Javanji Thakor at Exh. 21 and P.W. 2 Hamirji Kacharaji Thakor at Exh. 22. The prosecution examined both these witnesses as eye witnesses who had allegedly seen the incident.

10. P.W. 1 Bhalaji Javanji Thakor Exh. 21 in

his deposition stated that on the night of the incident at about 9-00 O'clock when he was returning home, he saw accused Anadaji Thakor inflicting knife blow on the neck of deceased Pratapji and accused Chhagnaji had axe and accused Ramsingji had 'dhariya' in their hand and all of them were inflicting blows to Pratapji with their weapons. The witness also deposed that he told accused Anadaji as to what he was doing therefore accused Anadaji asked him to go away saying that otherwise he would also meet with the same fate. Therefore, he was frightened and so did not inform family members of the deceased after he returned home, but after 15 to 20 days he informed one Mangaji about the incident. The witness admitted that Maganji resides at Kahipur village with his family members. The witness also admitted that the police recorded his statement on 20-2-2001 and 26-9-2001 and that he knew Pratapji since childhood and many cases were filed against Pratapji and himself. The witness deposed that he did not inform any of his family members or friend or any one of the villagers about the incident. The witness also admitted that disputes in respect of

land is pending between the complainant and the accused. Analyisng the evidence of this witness it appears that the witness and the deceased were knowing each other since childhood and both were involved in many criminal cases and there was dispute between the complainant and the accused in respect of the property. Considering the fact that the witness was involved in number of criminal cases, it would be difficult to believe that after witnessing the incident he was scared and therefore did not inform any one about the incident. It is strange that police recorded statement of this witness twice but he did not disclose about the commission of the offence and involvement of the accused in the offence. Moreover, considering the time of incident the probability of presence of the witness also raises doubt. In view of criminal antecedent of the witness, we are of the view that it would not be safe to rely upon the evidence of this witness to connect the respondents – accused with the offence.

11. The prosecution also examined P.W. 2 Hamirji Kacharaji Thakor at Exh. 22 who allegedly saw the accused taking away the dead

body of Pratapji. According to the witness, on the night of the incident at about 11-45 to 12-00 when he was going to the field he saw all four accused taking away the dead body of Pratapji by making **"Joli/khoi"** in torch light and accused Anadaji and Punjaji gave him threats to kill if he disclosed this fact to any one. Therefore, after 15 to 20 days he disclosed this fact to Mangaji. The evidence of this witness also indicates that after witnessing the accused taking away the dead body of Pratapji, the witness went to the field, remained there whole night and returned home by the same road from where he had seen the accused taking away the dead body and after returning home he did not inform any one about the incident. Moreover, P. W. 1 Bhalaji witnessed the incident at about 9-00 p.m. whereas this witness saw dead body being taken away at about 11-45 to 12-00 at night. It is difficult to believe that the assailants would remain there with dead body for such a long time after allegedly committing murder. It is also strange that the witness returned home in the morning by the same road, however he did not notice any blood stained marks at the place of the incident nor he noticed the

dead body. It is difficult to accept the testimony of this witness as he did not inform any one after the incident but after about 15 to 20 days informed Mangaji about the incident. Even his presence at the place of incident at such odd hour also raises suspicious. It is significant that P.W.1 Bhalaji also in his deposition deposed that he informed Mangaji about the incident after 15 to 20 days but strangely said Mangaji is not examined by the prosecution though his statement was recorded by the Investigating Agency. In our view, looking to the conduct of the witness it is difficult to accept that he witnessed the accused taking away the dead body and therefore evidence of this witness does not inspire confidence.

12. The prosecution examined P.W. 3 Amaraji Mangaji at Exh. 39. The witness was the brother of deceased Pratapji and nephew of accused Anadaji. According to the witness, deceased Pratapji with the accused started to go to Ambaji on foot at about 8-30 p.m. and on the next day his uncle Anadaji was at home and on inquiry with him accused Anadaji informed him that deceased would return.

Thereafter on full-moon day the dead body was found and after some days, accused Anadaji in intoxication state told the witness that he had killed Pratapji and also gave threats to kill him if police was informed. The witness is confronted with his police statement wherein he stated before the police that the deceased went in a 'sangh' and did not state that the deceased went with the accused and that all the accused returned after the full moon day but his brother did not return. In our view the evidence of this witness is suspicious. It is also strange that accused Anadaji made extra judicial confession before him but the witness did not inform any one about the incident. Looking to the conduct of the witness it is difficult to believe that accused Anadaji made extra judicial confession before him. There is no evidence that accused gave threats to the witness. Therefore, considering the conduct of this witness, the evidence of this witness does not inspire confidence.

13. The prosecution also examined panch P.W. 4 Gandaji Dalsangji at Exh. 40. According to the witness, the accused showed willingness

to discover the weapons and accused Anadaji discovered knife, accused Punjaji discovered 'dharia' and accused Ramsangji discovered axe. The witness also admitted that he was illiterate but is able to sign and he did not read the panchnama but signed it as police asked him to sign. The panchanamas Exh. 42 and 46 appear to have been drawn on 10-10-2001 and 12-10-2001 respectively i.e. after about 13 months of incident. The panchanamas also indicate that muddamal knife was discovered from 'nalia' (cause way), 'dharia' was discovered from field and the axe was discovered from bush behind a hut. A joint panchanama is drawn in respect of discovery of 'dharia' and axe. The manner in which the weapons are allegedly discovered and the places from where they are discovered, in our view, the panchanamas cannot be relied upon and evidence of this witness cannot be accepted to connect the accused with discovery of weapons.

14. The prosecution examined P.W. 5 Govindji Bhabaji Exh.47 who was panch witness in respect of clothes produced by the accused. The evidence of this witness indicates that

after about one year of the incident he was called as panch and he was taken to the house of accused Anadaji from where the clothes were seized. The evidence also indicates that the panchanama was signed at Vadnagar Police Station after the clothes were seized from the house of accused Anadaji. The manner in which the panchanama is drawn in our view it does no connect the accused with the offence.

15. The prosecution examined Investigating Officer P.W. 6 Bachubhai Thavraji Baranda at Exh. 59. According to the witness, lie detection test of the accused was carried out. However, no evidence in that regard is adduced by the prosecution. The evidence of this witness also indicates that the statement of Rukhiben Pratapji, Amraji Mangaji, Sovanben Mangaji and Mangaji Punjaji were recorded by the earlier Investigating Officer but the name of the witnesses P.W. 1 Bhalaji and P.W. 2 Hamirji were not revealed in any of the statements. The witness also admitted that the names of witness P.W. 1 Bhalaji and P.W. 2 Hamirji were not disclosed in the complaint given by Rukhiben to D.S.P., Mehsana on 3-10-2000. Similarly, their names

were also not disclosed in the application given by her to P.S.I.,Vadnagar Police Station on 21-11-2000. On analysis of evidence of this witness, it appears that the names of P.W. 1 Bhalaji and P.W. 2 Hamirji as eye witnesses to the incident never revealed during the course of investigation.

16. The prosecution also produced complaint given by Thakor Rukhiben widow of Pratapji Mangaji at Exh.60. It was given on 21-11-2000 i.e. nearly after 2 months and 11 days of the incident to Police Sub-Inspector, Vadnagar Police Station. It is alleged therein that on account of land disputes the accused have committed murder of Pratapji. The complaint also indicates that she learnt from the villagers that the accused have killed Pratapji.

17. The prosecution also produced complaint given by Rukhiben to D.S. P. Mehsana, at Exh. 61. It appears to have been given on 3-10-2000 wherein it is alleged that the accused committed murder of Pratapji as the accused were doing business of liquor which Pratapji did not like and that accused

Anadaji wanted to grab the field of her uncle. In our view, both these complaints are contradictory and were lodged only with a view to implicate the accused in the offence, and therefore, the same cannot be relied upon.

18. The prosecution also examined P.W. 7 Jagubhai Malabhai Bharwad at Exh. 63. The witness initially recorded the information received by him as accidental death and thereafter lodged complaint Exh. 64. The evidence of this witness indicates that after disclosure of death of deceased Pratapji, statement of Rukhiben widow of Pratapji, brother and parents of deceased Pratapji were recorded on 14-9-2000. However, the witnesses did not show suspicion against any one in their statements. The evidence also indicates that in the complaints Exh.60 and 61 given by Rukhiben on 3-10-2000 and 21-11-2000 respectively, the names of P.W. 1 Bhalaji and P.W. 2 Hamirji were not disclosed. The evidence of this witness also indicates that in the statement of Rukhiben, Amaraji, Sovanben and Mangaji the name of P.W. 1 Bhalaji and P.W. 2 Hamirji as witnesses to the incident were not disclosed. In view of this

evidence, it becomes clear that initially the incident was recorded as accidental death but thereafter on the basis of complaint offence was registered and investigation was started. Thereafter, on the basis of statements of P.W. 1 Bhalaji and P.W. 2 Hamirji the accused were apprehended. It is also significant that Rukhiben lodged a complaint against the accused alleging their involvement in the offence but she has not been examined as witness by the prosecution. Therefore, in our view, the name of P.W.1 Bhalaji as eye witness and name of P.W. 2 Hamirji as a witness noticing the accused taking away the dead body were subsequently disclosed only with a view to implicate the accused in the offence. There is no evidence to indicate that deceased Pratapji along with the accused started to go to Ambaji on foot as alleged by the prosecution. Therefore, it cannot be said that the deceased was last in the company of the accused.

19. The prosecution also produced the complaint filed by deceased Pratapji against the accused at Exh. 38. It is in respect of

the incident that took place on 16-12-1995. However, it is difficult to believe that on account the complaint filed in the year 1995 the accused committed the offence in the year 2000.

20. In view of above, there is no iota of evidence to connect the accused with the offence. Therefore, the learned trial Judge was justified in recording the acquittal of the accused and no interference is warranted in the impugned judgment and order. Hence, leave to appeal is refused and appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta,J.)

/JVSatwara/